

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Sudeen G. Kelly.

Pacific Gas and Electric Company

Docket Nos. ER03-1115-000
ER03-1115-003
ER03-1115-004

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued August 17, 2005)

1. On April 15, 2005, Pacific Gas and Electric Company (PG&E) filed an uncontested offer of settlement to resolve all issues raised in the above referenced proceedings. As discussed below, the Commission approves the settlement

Background

2. At issue in this proceeding are several agreements between Pacific Gas and Electric Company (PG&E) and Elk Hills Power, LLC (Elk Hills) arising from the interconnection of Elk Hills' 550 megawatt, gas-fired, combined-cycle electric generation facility near Bakersfield, California. Those agreements include (1) a revised Generator Special Facilities Agreement, (2) a revised Supplemental Letter Agreement, and (3) a Generator Interconnection Agreement. The Commission originally found that the two 230 kV circuit breakers and associated facilities necessary for interconnection were network upgrades, the cost of which ultimately should be included in PG&E's transmission rates.¹ On rehearing, the Commission concluded that the two 230 kV circuit breakers and associated facilities are properly classified as sole use (direct assignment) facilities, the cost of which should be borne by Elk Hills.² The Commission reasoned that although the circuit breakers and associated facilities are inside a PG&E substation, they are located prior to (on the generator's side of) the physical point of interconnection with PG&E's transmission system, and their costs are directly assignable.³ On April 23, 2004, Elk Hills filed a request for rehearing of the *March 2004 Order*.

¹ *Pacific Gas & Electric Co.*, 105 FERC ¶ 61,020 (2003).

² *Pacific Gas & Electric Co.*, 106 FERC ¶ 61,303 (2004) (*March 2004 Order*).

³ *March 2004 Order* at P 7.

Settlement

3. The settlement explains that it is a negotiated agreement that resolves all issues between the parties in this docket, but is not an admission as to the validity of any contentions. It identifies the dollar amounts allocable to network upgrade and direct assignment facility costs, the monthly cost-of-ownership charge that Elk Hills owes PG&E under the special facilities agreement, the terms for repaying network upgrades in the form of credits, and the terms related to tax payments to PG&E associated with the facilities. The settlement also specifies that, with one exception, the applicable standard of review is the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Any revisions to the monthly cost-of-ownership charge provisions are excepted from the settlement provision establishing the "public interest" standard as the applicable standard of review. Since no comments were filed, the settlement is uncontested.

4. The subject settlement is in the public interest and is hereby approved. The Commission's acceptance of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

5. This order terminates Docket Nos. ER03-1115-000, ER03-1115-003, and ER03-1115-004.

By the Commission. Commissioner Kelly dissenting in part with a separate statement attached.

(S E A L)

Linda Mitry,
Deputy Secretary.

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Pacific Gas and Electric Company

Docket Nos. ER03-1115-000
ER03-1115-003
ER03-1115-004

(Issued August 17, 2005)

KELLY, Commissioner, *dissenting in part*:

For the reasons I have previously set forth in *Wisconsin Power & Light Co.*, 106 FERC ¶ 61,112 (2004), I do not believe that the Commission should depart from its precedent of not approving settlement provisions that preclude the Commission, acting *sua sponte* on behalf of a non-party, or pursuant to a complaint by a non-party, from investigating rates, terms and conditions under the “just and reasonable” standard of section 206 of the Federal Power Act at such times and under such circumstances as the Commission deems appropriate.

Therefore, I disagree with this order to the extent it approves a settlement that provides the standard of review for any modifications to this Settlement Agreement, including any modifications resulting from the Commission acting *sua sponte*, shall be the “public interest” standard under the *Mobile-Sierra* Doctrine.

Suede G. Kelly